

ORIGINAL

Docket No.

THE SUPREME COURT OF THE UNITED STATES

-----X

Jeffrey G. Carswell
Heinz Eriksen
Bent Hansen

Petitioners

-against-

E.Pihl & Son
Danish Construction Company
Topseo- Jensen & Schroeder Ltd.
Director OWCP

Respondents

On Writ of Certiorari
To Second Circuit

Ian Anderson Esq.
Petitioners Counsel
of Record
P.O.Box 150362
Kew Gardens NY 11415
Tel. 718- 846- 9080
iandersonadvocate@msn.com

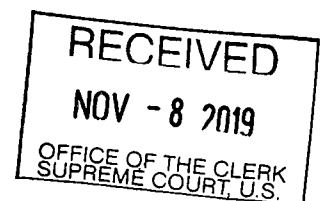
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**PETITIONERS' MOTION FOR AN ORDER DIRECTING THE CLERK
OF COURT TO FILE AND DOCKET THEIR CERTIORARI PETITION.**

PREAMBLE

The Clerk of this Court believes that the above Petitioners' petition for a writ of certiorari to the Second Circuit may be untimely because of a "*June, (sic July) 18th. 2019*" order of the Second Circuit denying rehearing, and a July 18th. 2019 order which "*does not appear to be an order denying a timely petition for rehearing.*" (**Exhibit A**, Clerk's letter)

This belief is incorrect. In addition to the confusion of dates in the Clerk's letter,



the Second Circuit Clerk of Court issued a premature and unauthorized mandate with the June 18th. 2019 order, attempting to impede Petitioners' filing of a timely rehearing/ reconsideration motion.

BACKGROUND

i) Petitioners' Certiorari Petition

1) Petitioners filed and served a Petition for a Writ of Certiorari to the Second Circuit Court of Appeals on October 11th. 2019 to resolve an ongoing conflict amongst the Circuit courts over Federal jurisdiction to review workers compensation orders under the US Defense Base Act, (an extension of the Longshore and Harbor Workers Act). ¹

2) The matter arose out of the Second Circuit's transfer of Petitioners' agency review cases for denial of workers' compensation, to the First Circuit in Boston.

3) In doing so the Second Circuit denied Petitioners' 28 USC 1254 (2) request for certification to resolve the Circuit courts' conflict over to whether the US District or US Circuit courts have review jurisdiction in such matters. (See

Exhibit B, June 18th. 2019 Second Circuit Order transferring Petitioners' cases

¹Petitioners' Certiorari Petition is currently held by the Clerk of Court and shows that five, (5), Circuit courts believe that only District courts have such review jurisdiction, while four, (4), Circuit courts, (including the Second circuit), believe that only Circuit courts have review jurisdiction. The Certiorari petition also shows that US Department of Labor agencies are also conflicted. The Benefits Review Board favors District court review, while the Director OWCP favors Circuit court review.

This unresolved problem arose in 1972 when Congress amended the Longshore and Harbor Workers Act, but not the Defense Base Act extension.

over their objections and denying certification)

Contrary to the Clerk's confused letter, **Exhibit A**, the June 18th. 2019 order did not address or deny a petition for rehearing.

ii) The Second Circuit Clerk's Irregular actions;
Problem of the Unauthorized Premature Mandate.

4) The Second Circuit Clerk of Court simultaneously issued a mandate with the Court's June 18th. 2019 order. (See **Exhibit B**, with endorsed mandate: "*Mandate issued on June 18th. 2019*") This was irregular and contrary to the peremptory time- requirements of FRAP Rule 41 (b) for the issuance of a mandate. It was also not authorized by the June 18th. 2019 order.

As such, it impeded any motion by Petitioners for reconsideration. While FRAP Rule 41(b) permits a court to shorten or extend its time limits, it does not authorize the preclusion of such motions.

5) Petitioners wished to file a reconsideration motion dealing with the denial of certification and the failure of the June 18th. 2019 order to address their argument that the New York Federal courts, (District or Circuit), had jurisdiction since all hearings were conducted at the Varick Street, Manhattan premises of the New York Director OWCP.

6) In a June 19th. 2019 'phone call to the Second Circuit Deputy Clerk of Court, Petitioners' attorney requested a recall of the premature mandate to enable Petitioners to file their reconsideration motion. He was informed that no further

papers would be accepted in the case for filing. When he attempted to refer to FRAP Rule 41(b), he was disconnected.

7) On the same day, (June 19th. 2019), Petitioners' attorney sent a letter to Catherine O'Hagan Wolfe, the Clerk of Court, informing her of Petitioners' intent to file a reconsideration motion and requesting clarification of her position with regard to the premature and unauthorized mandate. (See **Exhibit C**, copy of June 19th. 2019 letter, also filed and served electronically on all parties.)

8) The letter was not responded to. As it was now apparent that the premature mandate was deliberately issued to impede reconsideration, a letter was sent to the Chief Judge of the Second Circuit on June 20th. 2019 drawing his attention to the Clerk's irregular actions and Petitioners' intent to file for reconsideration. (See **Exhibit D**, copy of letter to Chief Judge)

9) Since Second Circuit Local Rule 27.1 (g) provides 14 days within which to file a reconsideration motion, Petitioners' attorney proceeded in the meantime to draft such a motion to avoid being time- barred. ²

10) The Second Circuit rules also require a moving party to ascertain whether a respondent intends to oppose a motion or not. Petitioners' attorney duly sent e-mails in this regard to the respondents. An "out of office" reply was received

² FRAP Rule 40 (a)(B) also extends this to 45 days when a US agency is involved, such as Respondent Director OWCP.

from the representative of the District Director.

11) No reply was received from Respondent-employer's attorney.

In a follow- up 'phone call however, she stated that the Clerk of Court had directed her not to respond to motions by Petitioners.

12) Since it was now clear that the Clerk of Court was deliberately trying to obstruct Petitioners' rights to file for reconsideration, Petitioners properly filed a timely reconsideration motion on June 25th. 2019 by the court's CM/ECF filing system, with electronic service on all parties. (See **Exhibit E**, containing first two pages of the motion for reconsideration.) A stay, if necessary, of the unauthorized premature mandate was also requested. (**Exhibit E**, para. 3)

13) On June 26th. 2019, the Second Circuit Clerk refused to accept the filing, stating that "*The mandate was issued in this appeal*" and threatened to have the motion documents "*stricken*" unless the motion was re- formulated as a "*motion to recall the mandate and for permission to file motion for reconsideration / reconsideration en banc.*" (See **Exhibit F**, Clerk's June 26th. 2019 "Notice of Defective Filing".)

14) Petitioners required no "*permission*" to file their timely June 25th. 2019 reconsideration motion as they considered the premature, unauthorized mandate to be legally ineffective. But in order to avoid being time- barred they were forced to reformulate it as demanded by the Clerk, and filed a reformulated motion for "*permission*" for reconsideration on June 28th. 2019. (See **Exhibit G**,

CM/ECF motion- filing information sheet for June 28th. 2019)

15) On July 18th. 2019, the Second Circuit refused to recall the unauthorized premature mandate and refused “*leave to file a petition for rehearing or rehearing en banc*. (**Exhibit H**, copy of order)

ARGUMENT ON TIMELINESS OF CERTIORARI PETITION

i) Clerk of Supreme Court’s Letter, (Exhibit A)

16) As appears from the above, (Preamble), the Clerk’s letter confuses the June 18th. 2019 order transferring Petitioners’ cases to Boston and denying certification with its later order of July 18th. 2019 denying Petitioners’ reformulated “*leave*” motion for reconsideration.

Neither the Petitioners’ June 25th. 2019 reconsideration motion, (**Exhibit E**), nor their reformulated June 28th. 2019 version for “*leave*”, (demanded by the Second Circuit Clerk), was untimely. Under Second Circuit Local Rule 27.1 (g), the 14 day period for reconsideration only expired on July 3rd. 2019. Under FRAP Rule 40 (a)(B) it expired on August 5th. 2019. (See Fn. 2)

17) The Second Circuit’s July 18th. 2019 order clearly could not deny reconsideration because of Petitioners’ lack of timeliness. It could only be legitimately denied after rejecting the grounds for reconsideration, (including the conflict with other Appellate courts), and permitting the premature, unauthorized transfer mandate to stand.

18) Pursuant to Rules 13 (3) and 30 (1) of this Court, the certiorari petition was also timely and within the 90 day period for filing from the July 18th. 2019 order, the last day of which was October 16th. 2019, the day on which the Clerk received it. (See Clerk's letter, (**Exhibit A**) The petition was also electronically filed on October 11th. 2019.

ii) The Unauthorized Premature Transfer Mandate

19) No adverse inferences should be drawn against Petitioners from the irregular attempts by the Second Circuit Clerk to obstruct reconsideration with the improper issuance of a premature, unauthorized mandate on the same day of the June 18th. 2019 order.

The Clerk's refusal accept any further filing, including Petitioners' timely June 25th. 2019 reconsideration motion and her subsequent demand that "*leave*" be obtained due to issuance of her premature mandate, was highly improper and contrary to fair and proper Appellate court procedures. See also, Durham v. US 401 US 481 at 482 where this Court waived its certiorari rule on timeliness when Appellate court employees also acted in a prejudicial manner.

a) The Proper Procedure; "Stop- Clock" Orders

20) The proper procedure in the Federal Appeal courts when a Clerk issues a transfer mandate prematurely without authorization, is to issue a "stop-clock" order to extend the time for filing a reconsideration motion. See US v.

Payton 593 F. 3rd. 881, 883, (2010), where the Ninth Circuit Clerk of Court erroneously issued a transfer mandate to the District court two days early, before expiry of the FRAP Rule 41 (b) time period.

In addition to the “stop- clock” order, the Clerk of Court “(R)ecognizing that the mandate had been issued prematurely.... deleted as erroneous the entry in our docket showing the mandate had been issued.” (*Ibid*)

21) If these proper procedures had been applied by the Second Circuit Clerk, Petitioners’ June 25th. 2019 reconsideration motion, (**Exhibit E**) would have been accepted for filing and either granted or denied on its merits.

Even a mandate properly issued by a Circuit court may be recalled by it to prevent injustice. See Sun Oil Co. v. Burford 130 F 2nd. 10 at 13; (Fifth Cir.)

The lack of proper procedural steps by the Second Circuit Clerk indicated an egregious intention to ignore FRAP Rule 41 (b) and impede reconsideration.

b) Effectiveness of a Mandate on Finality of Judgement

22) In their letter to the Second Circuit Clerk of June 19th. 2019, (**Exhibit C**) Petitioners’ correctly expressed the view that the premature mandate was ineffective to preclude reconsideration.

21) The judgement of a Federal Appeals court is not final until the timely issuance under FRAP 41(b) of an authorized mandate. See US v. Swan 327 F. Supp 2nd. 1068, 1071.

22) In Petitioner's cases the unauthorized premature transfer mandate issued simultaneously with the June 18th. 2019 order was ineffective to render that order final. See US v. Payton, *supra* at 883, where the Ninth Circuit found it unnecessary to deem the premature transfer mandate ineffective, for reasons specific to that case.

RARE OPPORTUNITY FOR COURT TO REVIEW AND RESOLVE
JURISDICTIONAL CONFLICT RAISED IN THE CERTIORARI PETITION.

23) The conflict amongst the US Appeal Courts over jurisdiction to review workers compensation decisions under the Defense Base Act has persisted since the problem arose in 1972 when Congress amended the Longshore and Harbor Workers Compensation Act, but not the extended provisions compensating workers at overseas military bases under the Defense Base Act. (See Fn. 1 above)

24) Though five (5) Appeal courts hold that the District courts have review jurisdiction in Defense Base Act cases and four (4) Appeal courts hold that only Appeal courts have such review jurisdiction, no Appeal or District court has ever certified this matter under 28 USC 1254 (2) to this Court for resolution. (See for example **Exhibit B**, Second Circuit's June 18th. 2019 order denying certification)

25) As the certiorari petition shows, the US Department of Labor's haphazard allocation of Compensation Districts across the US for filing Defense Base Act

claims from geographically disparate military bases around the world, has created an anomalous system of Federal review.

26) For example, claims from bases in Iraq are referred to a Second Compensation District in New York, where the Second Circuit court favors Circuit court review. (*Service Employees Int. Inc. v. Director OWCP* 595 F 3rd. 447, 452). But claims from Midway Islands bases are referred to the Fourth Compensation District where the Eleventh Circuit court favors District court review. (*ITT Base Serv.v. Hickson* 155 F. 3rd. 1272,1275)

27) Resolution of this jurisdictional conflict is not limited to Petitioners' cases but affects thousands of American and foreign workers at approximately 800 overseas bases, including employees of welfare providers to the US military, such as the United Services Organization, (USO), the US Red Cross and the Salvation Army. The jurisdictional uncertainty also affects contractors and their insurers in such cases.

CONCLUSION

For the above reasons the Clerk of Court should be directed to file and docket Petitioners' timely certiorari petition.

Dated October 31st. 2019

A handwritten signature in black ink, appearing to read "Ian Anderson".

Ian Anderson Esq.
Petitioners' Counsel

APPENDIX

CONTAINS

- Exhibit A:** October 25th. 2019 letter of Scott S. Harris Clerk of the US Supreme Court confusing Second Circuit judgement dates.
- Exhibit B:** June 18th. 2019 Order of Second Circuit Court of Appeals, transferring Petitioners' cases to the First Circuit and denying 28 USC 1254 (2) certification to resolve jurisdiction conflict amongst Circuits. Endorsed with "MANDATE ISSUED ON 06/18/2019":
- Exhibit C:** June 19th. 2019 letter to Second Circuit Clerk of Court, concerning her refusal to accept further filings in Petitioners' cases.
- Exhibit D:** June 20th. 2019 letter to Chief Judge of the Second Circuit concerning the Clerk of Court's refusal to accept further filings and her premature, unauthorized mandate.
- Exhibit E:** June 25th. 2019. Petitioners' Reconsideration Motion, (pages 1 to 2), electronically filed and served by the Second Circuit's CM/ECF system.
- Exhibit F:** June 26th. 2019. Second Circuit Clerk's refusal to file June 25th. 2019 Reconsideration Motion. Due to mandate, "*leave*" now required for reconsideration.
- Exhibit G:** June 28th. 2019 CM/ECF filing cover- sheet for Petitioners' motion for "*leave*" to reconsider.
- Exhibit H:** July 18th. 2019 Second Circuit order refusing to recall premature, unauthorized mandate and denying "*leave*" for "*rehearing or rehearing en banc*."

Exhibit A

October 25th. 2019 letter of Scott S. Harris Clerk of the
US Supreme Court confusing Second Circuit judgement dates.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

October 25, 2019

Ian Anderson
P.O. Box 150362
Kew Gardens, NY 11415

RE: Carswell, et al. v. E. Phil & Sons, et al.

USCA2 No. 19-151

Dear Mr. Anderson:

The above-entitled petition for a writ of certiorari was postmarked October 11, 2019 and received October 16, 2019.

The petition is out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was June 18, 2019. Therefore, the petition was due on or before September 16, 2019. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition.

The order entered in the United States Court of Appeals for the Second Circuit on July 18, 2019, does not appear to be an order denying a timely petition for rehearing. Rule 13.3.

Sincerely,
Scott S. Harris, Clerk

By:



Clara Houghteling
(202) 479-5955

Enclosures
cc: Sarah B. Biser
Noel J. Francisco

Exhibit B

June 18th. 2019 Order of Second Circuit Court of Appeals, transferring Petitioners' cases to the First Circuit and denying 28 USC 1254 (2) certification to resolve jurisdiction conflict amongst Circuits.
Endorsed with "MANDATE ISSUED ON 06/18/2019":

MANDATE

Dep't of Labor
BRB 18-0091
BRB 18-0092
BRB 18-0093

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of June, two thousand nineteen.

Present:

Ralph K. Winter,
José A. Cabranes,
Reena Raggi,
Circuit Judges.

Jeffrey G. Carswell, et al.,

Petitioners,

v.

19-151

E. Pihl & Sons, et al.,

Respondents.

Respondent United States Department of Labor, through its Director of the Office of Workers' Compensation Programs, moves to transfer this case to the United States Court of Appeals for the First Circuit. Petitioners cross-move to certify questions of law to the Supreme Court pursuant to 28 U.S.C. § 1254. Upon due consideration, it is hereby ORDERED that Petitioners' cross-motion is DENIED. See *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam); *Taylor v. Atl. Mar. Co.*, 181 F.2d 84, 85 (2d Cir. 1950) (per curiam). It is further ORDERED that Respondent's motion is GRANTED. See 28 U.S.C. § 1631; *Serv. Emps. Int'l, Inc. v. Dir., Office of Workers Comp. Program*, 595 F.3d 447, 454 (2d Cir. 2010).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit



MANDATE ISSUED ON 06/18/2019

Exhibit C

June 19th. 2019 letter to Second Circuit Clerk of Court,
concerning her refusal to accept further filings in Petitioners' cases.

IAN ANDERSON ESQ
Advocate and Attorney at Law

Admitted: New York
United Kingdom
European Union Jurisdictions
South Africa

Tel. 718- 846- 9080

Catherine O' Hagen Wolfe
Clerk of Court
US Second Circuit Appeals Court
Thurgood Marshall US Courthouse
40 Foley Square
New York, NY 10009

June 19th. 2019

Re; Eriksen, Hansen, Carswell v. E. Pihl & Son *et al*

Agency Review 19- 151

Dear Clerk,

I represent the Danish Petitioners in the above agency review matter and refer to your mandate and letter to the US First Circuit Appeals Court of yesterday, June 18th. 2019, which I received simultaneously with this Court's decision of the same date, denying certification to the US Supreme Court on an unsettled jurisdictional question and granting the Department of Labor's request for transference to the First Circuit Appeals Court in Boston.

I am instructed by the Danish Petitioners to file an *en bank* rehearing motion on the question of the Court's jurisdiction to review agency orders under the Defense Base Act, which is the subject of unresolved conflicting decisions of the various US Circuit Courts.

Today however I was informed by Court employees, that due to you mandate of yesterday, Petitioners' cases were now closed and your office would not accept any further case filing therein.

PO Box 150362, Kew Gardens, NY 11415- 0362
iaandersonadvocate@msn.com

As you may be aware however, the mandate of the nature you issued yesterday only becomes effective, pursuant to the FRAP rules, 7 days after the time to seek *en banc* reconsideration has expired. Filing such a motion automatically tolls such time until 7 days after a final determination of such a motion.

In light of the above please clarify the position of your office in this regard.

Yours sincerely,

A handwritten signature in black ink that reads "Ian Anderson." The signature is written in a cursive, slightly slanted style.

Ian Anderson

Exhibit D

June 20th. 2019 letter to Chief Judge of the Second Circuit concerning the Clerk of Court's refusal to accept further filings and her premature, unauthorized mandate.

IAN ANDERSON ESQ
Advocate and Attorney at Law

Admitted: New York
United Kingdom
European Union Jurisdictions
South Africa

Tel. 718- 846- 9080

The Hon. Robert A. Katzmann
Chief Judge
US Second Circuit Appeals Court
Thurgood Marshall US Courthouse
40 Foley Square
New York, NY 10009

June 20th. 2019

Re; Eriksen, Hansen, Carswell v. E. Pihl & Son *et al*
Agency Review 19- 151

Dear Chief Judge,

I represent Danish Petitioners in the above workers compensation review matter. On June 18th. 2019 the Court granted the motion of the Department of Labor (DOL), to transfer this agency review case to the First Circuit Boston.

In doing so the Court denied Petitioners' cross motion for certification to the US Supreme Court for instructions on the unresolved question of which Federal court has in fact jurisdiction to review such agency determinations. (Five Circuit courts hold that only the Federal District court can review workers' claims under the Defense Base Act, while four Circuits hold that the Circuit courts have jurisdiction.) The Court's order is attached hereto.

I only bring this matter to your attention because the Clerk of Court has stated that she will not permit Petitioners to file an *en banc* reconsideration motion as provided for in the Court's rules. The reason being that on the day of the Court's June 18th. 2019 order she issued an informal transference mandate and has stated, though not in writing, that the Court lacks jurisdiction to hear such a motion.

As you are aware however FRAP Rule 41 provides that such a mandate only becomes effectively “issued” seven (7) days after the expiry of the time for a rehearing, or seven (7) days after the entry of an order denying rehearing. FRAP 41 conforms in this regard to the recommendation of the Advisory Committee on Appellate Rules that filing an *en banc* rehearing request stays a court’s mandate.

While the Court can shorten this period, it has not done so. I am instructed by Petitioners to file an *en banc* motion for rehearing and will do so.

I would therefore be obliged if you in your capacity as Chief Judge would look into the Clerk’s stated refusal to accept filing of any such request since this raises an issue relating to the proper internal operation of the Court.

Yours sincerely,

A handwritten signature in black ink that reads "Ian Anderson". The signature is written in a cursive, slightly slanted style.

Ian Anderson

Exhibit E

June 25th. 2019. Petitioners' Reconsideration Motion, (pages 1 to 2), electronically filed and served by the Second Circuit's CM/ECF system.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

Jeffrey G. Carswell
Heinz Eriksen
Bent Hansen

Petitioners

-against-

E. Pihl & Sons
Topseo- Jensen & Schroeder Ltd

(Danish Construction Company)

Respondents

Docket No. 19- 151

**PETITIONERS'
RECONSIDERATION
MOTION**

1) Petitioners Jeffrey G. Carswell, Heinz H. Eriksen and Bent Hansen hereby move this Court pursuant to FRAP 27 (b) and Local Rule 27.1(g), for reconsideration of its June 18th. 2019 order transferring their agency review cases to the First Circuit, Boston and denying their 28 USC sec. 1254 (2) certification request for instructions from the US Supreme Court on which Federal court has review jurisdiction over Benefits Review Board decisions in matters proceeding under the Defense Base Act. (Order of 6/18/2019 attached hereto.)

2) This jurisdictional issue is ripe for US Supreme Court resolution by certification due to the uncertainty in the Federal review system caused by conflicting jurisdictional decisions of the various Federal Circuit courts. *En*

banc reconsideration of Petitioners' certification request is accordingly appropriate and requested.

3) Pursuant to FRAP 41 (b), the filing of this motion tolls the Clerk's informal mandate for transference, the issuance time for which, the Court did not shorten. If necessary the Clerk's premature mandate issuance must be stayed.

GROUND FOR RECONSIDERATION

4) The Danish Petitioners developed serious non- familial cancers from inhalation and ingestion of weapons grade plutonium, (Pu 239), after participating in months long emergency "clean- up" operations near the US Air Force Base at Thule Greenland, were they were employed as civilian employees.

Scope and Effect of the Jurisdictional Problem

5) The Court's short eight (8) line decision, supported with very few authorities, clearly overlooked or misapprehended both the law and the extent of the important jurisdiction problem both for i) Petitioners and ii) for the Court itself.

EXTENT OF JURISDICTIONAL PROBLEM

i) Petitioners

The Court clearly overlooked the fact this is not just a minor internal Second Circuit problem for a few Danes seeking review of a workers compensation finding, as this Court's short decision wrongly suggests. Their agency review encompasses an important *inter-* Circuits dispute, affecting thousands of civilian defense base workers, (both American and foreign), at the approximately 800

Exhibit F

June 26th. 2019. Second Circuit Clerk's refusal to file June 25th. 2019 Reconsideration Motion. Due to mandate, "*leave*" now required for reconsideration.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: June 26, 2019

Docket #: 19-151ag

Short Title: Carswell v. E. Pihl & Sons

Agency #: BRB No. 18-0091

Agency: Department of Labor (except OSHA)

Agency #: BRB No. 18-0092

Agency: Department of Labor (except OSHA)

Agency #: BRB No. 18-0093

Agency: Department of Labor (except OSHA)

NOTICE OF DEFECTIVE FILING

On June 25, 2019 the motion for rehearing en banc, on behalf of the petitioners, was submitted in the above referenced case. The document does not comply with the FRAP or the Court's Local Rules for the following reason(s):

- ☐ Failure to submit acknowledgment and notice of appearance (*Local Rule 12.3*)
- ☐ Failure to file the Record on Appeal (*FRAP 10, FRAP 11*)
- ☐ Missing motion information statement (*T-1080 - Local Rule 27.1*)
- ☐ Missing supporting papers for motion (e.g, affidavit/affirmation/declaration) (*FRAP 27*)
- ☐ Insufficient number of copies (*Local Rules: 21.1, 27.1, 30.1, 31.1*)
- ☐ Improper proof of service (*FRAP 25*)
 - ☐ Missing proof of service
 - ☐ Served to an incorrect address
 - ☐ Incomplete service (*Anders v. California 386 U.S. 738 (1967)*)
- ☐ Failure to submit document in digital format (*Local Rule 25.1*)
- ☐ Not Text-Searchable (*Local Rule 25.1, Local Rules 25.2*), click [here](#) for instructions on how to make PDFs text searchable
- ☐ Failure to file appendix on CD-ROM (*Local Rule 25.1, Local Rules 25.2*)
- ☐ Failure to file special appendix (*Local Rule 32.1*)
- ☐ Defective cover (*FRAP 32*)
 - ☐ Incorrect caption (*FRAP 32*)
 - ☐ Wrong color cover (*FRAP 32*)
 - ☐ Docket number font too small (*Local Rule 32.1*)
- ☐ Incorrect pagination, click [here](#) for instructions on how to paginate PDFs (*Local Rule 32.1*)
- ☐ Incorrect font (*FRAP 32*)
- ☐ Oversized filing (*FRAP 27 (motion), FRAP 32 (brief)*)
- ☐ Missing Amicus Curiae filing or motion (*Local Rule 29.1*)
- ☐ Untimely filing
- ☒ **Incorrect Filing Event : SEE BELOW**
- ☒ **Other: The mandate was issued in this appeal. The appropriate**

motion is motion to recall mandate and for permission to file motion for reconsideration/reconsideration en banc.

Please cure the defect(s) and resubmit the document, with the required copies if necessary, no later than June 28, 2019. The resubmitted documents, if compliant with FRAP and the Local Rules, will be deemed timely filed.

Failure to cure the defect(s) by the date set forth above will result in the document being stricken.

Inquiries regarding this case may be directed to 212-857-8541.

Exhibit G

June 28th. 2019 CM/ECF filing cover- sheet for Petitioners' motion for "*leave*" to reconsider.

MOTION INFORMATION STATEMENT

Docket Number(s): 19-151

Caption [use short title]

Motion for: Recall of mandate and
permission to file en banc reconsideration
motion.

CARSWELL et al
Petitioners

v.

E.PIHL & SON et al

Respondents

Set forth below precise, complete statement of relief sought:

Recall of 6/18/ 2019 mandate and on
recall, permission to file en banc motion
for reconsideration of 6/18/2019 order.

MOVING PARTY:

☐ Plaintiff

☐ Defendant

☒ Appellant/Petitioner

☐ Appellee/Respondent

OPPOSING PARTY: Employer; Director OWCP

MOVING ATTORNEY: Ian Anderson

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: S. Biser; M.Reinhalter

I. Anderson, P.O. Box 150362, Kew Gdns.
NY, NY 11415; 718- 846- 9080
ianandersonadvocate@msn.com

S. Biser, 101 Park Ave. NY, NY 10173; 646-
601-7636; sbiser@foxrothschild.com
M. Reinhalter, 200 Const. Ave. NW, Wash.

Court/Judge/Agency appealed from: Benefits Review Board

DC; 202-683-5658; reinhalter.mark@dol.gov

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes

☐ No

(explain):

Opposing counsel's position on motion:

☐ Unopposed

☒ Opposed

☐ Don't Know

Does opposing counsel intend to file a response:

☒ Yes

☐ No

☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes

☐ No

Has this relief been previously sought in this Court?

☐ Yes

☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☒ Yes

☐ No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes

☒ No

If yes, enter date:

Signature of Moving Attorney:

Ian Anderson

Date:

6/28/2019

Service by:

☒ CM/ECF

☐ Other

[Attach proof of service]

Exhibit H

July 18th. 2019 Second Circuit order refusing to recall premature, unauthorized mandate and denying “*leave*” for “*rehearing or rehearing en banc*.”

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of July, two thousand and nineteen.

Before: Ralph K. Winter,
José A. Cabranes,
Reena Raggi,
Circuit Judges.

Jeffrey G. Carswell, Heinz Eriksen, Bent
Hansen,

Petitioners,

ORDER

Docket No. 19-151

v.

E. Pihl & Sons, Topseo- Jensen & Schroeder
Ltd, Danish Construction Company, United
States Department of Labor,

Respondents.

Petitioners move to recall the mandate and for leave to file a petition for rehearing or rehearing en banc.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

The block contains a handwritten signature, "Catherine O'Hagan Wolfe", written in cursive. The signature is written over a circular official seal of the United States Court of Appeals for the Second Circuit. The seal features the words "UNITED STATES" at the top and "SECOND CIRCUIT" at the bottom, with a central emblem.

**Additional material
from this filing is
available in the
Clerk's Office.**